UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN BELL TELEPHONE CO.,
d/b/a Ameritech Michigan, Inc.,

Plaintiff,

v.

CASE NO. 99-CV-71180-DT
JUDGE LAWRENCE P. ZATKOFF

JOHN G. STRAND and DAVID A. SVANDA,
Commissioners of the Michigan Public Service
Commission, in their official capacities, and
BRE COMMUNICATIONS, L.L.C.,

Defendants.
_____/

OPINION AND ORDER

AT A SESSION of said Court, held in the
United States Courthouse, in the City of Detroit,
State of Michigan, on the JAN 4 2000

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

Plaintiff Michigan Bell Telephone Company, d/b/a Ameritech Michigan, Inc. (hereinafter "Ameritech"), filed this action against BRE Communications, L.L.C. (hereinafter "BRE"). and John Strand and David Svanda, Commissioners of the Michigan Public Service Commission (hereinafter "MPSC") pursuant to the Federal Telecommunications Act of 1996. This matter is before the Court on plaintiff's appeal of the February 9, 1999 Opinion and Order (hereinafter "Opinion") issued by the MPSC.

The issues have been fully briefed by all parties. The Court finds the facts and the legal arguments are adequately presented in the briefs and the decisional process would not be

significantly aided by oral argument. Accordingly, the motion before this Court will be disposed of upon the briefs that the parties have submitted. See E.D. Mich. Local R. 7.1 (e)(2). For the reasons stated below, the MPSC's Opinion and Order is AFFIRMED, and Ameritech's complaint is DISMISSED with prejudice.

II. BACKGROUND

A. General Background

This matter arises out of a complaint filed by BRE on July 16, 1998 against Ameritech before the MPSC. The complaint alleged that Ameritech violated the Interconnection Agreement ("Agreement") entered into with BRE, the Michigan Telecommunications Act ("MTA"), and the Federal Telecommunications Act of 1996 ("FTA") by imposing "special construction" charges upon BRE for orders of unbundled loops.

BRE and Ameritech are competing providers of basic local exchange service in Michigan. Ameritech is the incumbent local exchange carrier. BRE is a competing local exchange carrier that began offering service in June 1997. BRE is a facilities-based provider because it either builds its facilities directly to customers or serves customers through the use of unbundled network elements acquired from Ameritech. The complaint in this case involves 65 occasions where Ameritech refused to provide unbundled loops to BRE unless BRE agreed to pay special construction charges. These incidents are arranged in a table format in the MPSC's Opinion. See Opinion, at 4.

The FTA sets forth the ways in which an incumbent local exchange carrier must accommodate a competing local exchange carrier's entry into the local market. For a competing

local exchange carrier that has, or that builds, its own local telephone network, the incumbent must provide access between its network and the network of its competitor, so calls can pass from one to another. 47 U.S.C. § 251(c)(2). For a competing local exchange carrier that wishes to create its own network by leasing all or part of that network from the incumbent, the incumbent must provide access to its own "network elements," on an "unbundled" basis. Id. § 251(c)(3). For a competing local exchange carrier that wishes to resell the incumbent's telecommunications services at retail, the incumbent must sell its retail services at wholesale to its competitor. Id. § 251(c)(4). The incumbent local exchange carrier must provide all of these products and services on a "nondiscriminatory" basis. Id. §§ 251(c)(2)(D), 251(c)(3), 251(c)(4)(B).

The substantive obligations of section 251 must be implemented by "interconnection agreements" between incumbent and competing local exchange carrier, and the FTA sets forth the procedure for arriving at such an agreement. See 47 U.S.C. § 252(b) Ameritech and BRE entered into their Agreement, titled "Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996" effective February 3, 1997. The MPSC approved the Agreement under the FTA on June 5, 1997.

The Agreement recites that "the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will Interconnect their networks and provide other services as required by the Act." The Agreement further provides that "in the event of a conflict or discrepancy between the provisions of this Agreement and the Act, the provisions of the Act shall govern." (See Plaintiff's Ex. 2, § 2.0.)

B. Unbundled Loop Technology

This case concerns Ameritech's provision of access to unbundled network elements, specifically "unbundled loops." The Agreement provides that "Ameritech shall provide non-discriminatory access to Network Elements on an unbundled basis . . . on rates, terms and conditions that are just, reasonable and nondiscriminatory in accordance with the terms and conditions of this Agreement and Sections 251(c)(3) and 252 of the Act." (See Plaintiff's Ex. 2, § 9.0.) The Agreement states that the term "Network Element" is "As Defined in the Act." (Id. § 1.40.) The FTA defines a network element to be "a facility or equipment used in the provision of a telecommunications service." 47 U.S.C. §153(29)

The Agreement defines a "Local Loop Transmission" or "Loop" to be "the entire transmission path which extends from the network interface or demarcation point at a Customer's premises to the Main Distribution Frame . . . in a Party's Wire Center which serves the customer." (See Ameritech's Brief Ex. 2, § 1.40.) In Ameritech v. Strand, case no. 98-74727 (E.D. Mich. June 9, 1999)(hereinafter "BRE I"), this Court defined a network element as the loop that consists of "the transmission path between the customer's premises and a switch located in a wire center [which] is the link to the rest of the telecommunications network."[1] Id. at 4. The Agreement states that "Ameritech shall provide BRE access to its unbundled loops at each of Ameritech's Wire Centers." (Ameritech's Brief Ex.2, § 9.4.4.)

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1 The Court stated that the loop consists of three components: "(1) a 'feeder pair' of copper or fiber wires that runs from the end office to a 'cross connect box;' (2) a 'distribution pair' that runs from the cross connect box to a pedestal near the customer's premises; and (3) a drop wire that runs from the pedestal to a network interface device at the customer's premises." Id.

Traditionally, each customer had their own copper loop, running from their premises, through the cross-connect box, all the way to the end office switch. With advances in digital technology, however, it is possible to improve efficiency and service by electronically aggregating loops. In these digital systems, the distribution pairs for several customers join and share a single, high-speed digital path (which serves the function of the traditional "feeder pair") between the cross-connect box and the end office. (Ameritech's Brief p.5, citing Tr. 331-32.) And in some cases, this aggregation is performed by a "remote switch" that can retain some basic calling capabilities within the small local community even if its link to the main end office switch is severed. (Id. at Tr. Ex. R-32.)

The existing facilities that are in place affect the way that Ameritech provides a competing local exchange carrier with access to unbundled loops. In the first and simplest scenario, "an Ameritech customer changes its service to BRE and BRE seeks access to the same loop that Ameritech used to serve that customer." (See Ameritech's Brief Ex. 3, at 5.) In that situation, "access to an unbundled loop may be accomplished by disconnecting the loop from Ameritech's switch and cross-connecting the loop to BRE's designated equipment or switch." Id. "This provision of access is the simplest" because the drop wire, distribution pair, and feeder pair are already in place and "connected through." Id. Ameritech states that it does not charge BRE for the construction in these cases, and "connected through" loops are not at issue here.

Next in a simple dispatch, "the distribution pair and feeder pair are in place at the same cross-connect box, but are not connected." Id. Provisioning such loops "requires dispatching a technician to the cross-connect box to connect the proper feeder pair to the proper distribution pair." Id. Simple dispatches are also done when the only work required is the addition of a drop

wire from the pedestal to the end user's home or business. As with "connected through" loops, Ameritech does not charge BRE for construction in these cases, and "simple dispatch" loops are not at issue in this case.

The facts in this case concerns loops that involve a "complex dispatch", "conditioning" of loops, and "remote switching" loops. The first type of loop order at issue in this case involve complex dispatches. In a "complex dispatch" not all of the loop components exist; or alternatively, the loop components might exist, but they are not contiguous and not connected to the appropriate outside plant interfaces. For example, a feeder and distribution pair might exist, but they go to different cross-connect boxes. This occurs when BRE wants to serve a customer not presently served by Ameritech, or when an Ameritech customer wants to add or upgrade loops in the process of switching to BRE. When this happens, the order is assigned to Ameritech's engineers, who identify the most efficient means to provision the loop. (See Ameritech's Brief p.6, citing to Tr. 337.) The engineers design the loop, and Ameritech's technicians install or rearrange facilities to create the loop. For example, creating a new feeder pair to reach the appropriate cross-connect box. (Id. at Tr. 329, 337, 339.) These design, engineering, and installation functions are called a "complex dispatch."

The second type of loop order at issue in this case involve conditioning loops. "Conditioning loops" occur when a requesting carrier wants to use the loop to carry high-speed data traffic, or use a single high-capacity loop in lieu of multiple, individual loops. Conditioning loops involves upgrading or "conditioning" the loop for high-capacity or high-speed data traffic. (Id. at Tr. 352-53.) Ameritech states that "most of the loops in Ameritech's network have been engineered and constructed to carry voice traffic." (Id. at Tr. 352.). To fill such requests,

Ameritech must remove load coils or bridge taps, which are designed to enhance voice service from the loop; and install "repeaters" for data traffic and "plug-in" equipment to allow high-speed transmission. (Id. at Tr. 353.). Ameritech argues that under federal law, competing carriers like BRE are to "bear the cost of compensating the incumbent LEC for such conditioning." (See Ameritech's Brief Ex. 4, In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, ¶ 1382 (Aug. 8, 1996) (First Report and Order)).

The third type of loop order at issue in this case involve "Remote Switching/ Integrated Digital Loop Carriers" ("IDLC"). Digital and "remote switching" technology allow several loops to share a single path from the cross-connect box to the end office. This aggregation increases efficiency, however, the integrated portion of the loop from the cross-connect box to the end office, cannot be unbundled. It cannot be reassigned from Ameritech to BRE because other Ameritech loops are still using the integrated path, and that path cannot be split between Ameritech and BRE. When BRE requests access to such loops, Ameritech determines if there is an existing "spare" single-loop facility that follows the same path as the integrated facility. If so, Ameritech disconnects the requested loop's feeder pair from the integrated facility and connects it to the spare facility at no extra charge. But where no spare single-loop facility exists, Ameritech designs and installs a new one that parallels the integrated path. (Ameritech's Brief, Tr. 349-50.). As with conditioning, the FCC has held that "the costs associated with these mechanisms will be recovered from requesting carriers" like BRE. (See Ameritech's Brief Ex. 4, at ¶ 1384).

Ameritech argues that the Agreement recognizes these special cases that require extra

work. Ameritech asserts that just as § 251(c) requires an incumbent to provide access only to its existing network, the Agreement requires Ameritech to provide access only to "available" network elements. Thus, "[a]ny request for access to a Network Element that is not already *available* at the time of such request or expressly contemplated by this Agreement" must be made by a special procedure called the Bona Fide Request ("BFR") process. (See Ameritech's Brief Ex. 2, at § 9.2). As for loops, § 9.4.2 of the Agreement reiterates: "Ameritech shall only be required to make available Loops . . . where such Loops . . . are available." Thus, Ameritech argues that in the event the requested loop is not available, it is not required to provide the loop to BRE. However, Ameritech states that it may consent to provide the loop, and in those cases it has the right to charge BRE for the extra cost incurred in provisioning access to those loops.

C. The MPSC Proceedings

On July 16, 1998, BRE filed a complaint against Ameritech with the MPSC, contesting Ameritech's charges for special construction on certain loops, even though the loops were not currently available in the form or configuration requested. BRE identified 64 specific loop orders for which Ameritech had billed BRE for special construction work: 15 of these requests involved integrated digital facilities where no spare physical loop was available; 5 involved "remote switching" loops; 13 represented requests for conditioned high-capacity digital loops; and the remainder required other complex dispatch work. (Id. at Tr. 342.). Ameritech argues that these instances comprised only 1.15 percent of BRE's total unbundled loop orders for the period covered. (Id. at Tr. 372.). The bulk of BRE's orders involved "connected through" or "simple dispatch" loops for which Ameritech did not assess special construction charges. BRE

claimed that Ameritech's assessment of special construction charges in these instances breached the Agreement and constituted unlawful "discrimination" under the Agreement and the FTA.

An evidentiary hearing on BRE's complaint was conducted on November 12-13, 1998, with testimony given by nine witnesses. The record consists of five volumes of transcript containing 813 pages and fifty-five exhibits. Following extensive briefing and a proposal for decision by an administrate law judge, the MPSC issued its Opinion and Order, which is the subject of this appeal, on February 9, 1999. In its Opinion and Order, the MPSC held:

> The definition of when an unbundled loop is unavailable is limited to where a loop is "located in an area not presently served by Ameritech Michigan, not when the area is served, but for some reasons the order requires a field dispatch." Opinion, at 15 & 25.
>
> That loops were "available" within the meaning of the interconnection agreement under all of the circumstances described in the 65 incidents that were the subject of the complaint. Opinion, at 16 & 25-26.
>
> By imposing special construction charges on BRE where, under similar circumstances, it routinely foregoes the collection of such charges from its own retail customers, Ameritech violates both the state and Federal law requirements that Ameritech provide unbundled network elements on a nondiscriminatory basis. Opinion, at 26-30.
>
> That Ameritech be ordered to cease and desist from demanding that BRE waive its right to dispute the special construction charges as a condition of providing loops. Opinion, at 31.
>
> That Ameritech should reimburse BRE for its costs and attorney fees. Opinion, at 31-32.
>
> That Ameritech be fined $170,000.00 for violations of the MTA. Opinion, at 32.

Ameritech filed its Complaint in this Court on March 11, 1999 for review of the MPSC's Opinion and Order. The MPSC has also briefed the issued raised by Ameritech in its appeal before the Court.

III. SCOPE AND STANDARD OF REVIEW

The Telecommunications Act of 1996 ("the Act"), 47 U.S.C. § 153 *et seq.*, provides for federal district court review of interconnection agreements. "[A]ny party aggrieved" by a decision of a state public utilities commission concerning such an agreement "may bring an action in an appropriate Federal district court to determine whether the Agreement . . . meets the requirements of the Act." Id. at 252(e)(6); Michigan Bell Tel. Co. v. Climax Tel. Co., 186 F.3d 726 (6th Cir. 1999). The Act does not specify either the standard or scope of review.

The scope of review is confined to the administrative record. With regard to the standard of review, as many district courts have stated, and this Court agrees "[the] court does not sit as a surrogate public utilities commission to second-guess the decisions made by the state agency to which Congress has committed primary responsibility for implementing the Act." U S West Communications, Inc. v. AT & T Communications of Pacific Northwest, Inc., 31 F. Supp.2d 839 (D. Or., 1998); MCI Telecommunications Corp. v. GTE Northwest, Inc., 41 F. Supp.2d 1157 (D. Or., 1999).

Therefore, this Court's principal task is to determine whether the Commission properly interpreted the Act and any implementing regulations, which is a question of federal law that is reviewed *de novo*. AT & T Communications of South Central States, Inc. v. BellSouth Telecommunications, Inc., 20 F. Supp.2d 1097 (E.D. Ky. 1998); see also U.S. West Communications v. Hix, 986 F. Supp. 13, 19 (D. Colo. 1997). In all other respects, review will be under the arbitrary and capricious standard. In determining whether an agency decision meets the arbitrary and capricious standard, a court must consider "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." Id.

IV. ANALYSIS

There are several issues raised on appeal by Ameritech. The first issue is whether the MPSC's decision that the special construction charges levied by Ameritech for 65 of BRE's unbundled loop orders is contrary to the Federal Telecommunication Act and the parties Interconnection Agreement. In order to decide this issue, the Court must determine whether Ameritech has an existing network to serve BRE's unbundled loop orders and whether those unbundled loops are available for BRE's use. The second issue is whether Ameritech discriminated against BRE when it assessed BRE special construction charges. The third issue is whether the MPSC's imposition of a fine, and the award of expenses and attorney fees to BRE are contrary to federal law.

A. Availability of Unbundled Loops

The first issue to be decided by the Court is whether Ameritech has a federal right to assess special construction charges against BRE under the circumstances in this case. Ameritech argues that section 251 "implicitly requires unbundled access only to an incumbent [local exchange carrier's] existing network — not to a yet unbuilt superior one." Iowa Utilities Board v. FCC, 120 F.3d 753, 813 (8th Cir. 1997). Thus, Ameritech argues that loops that involve a "complex dispatch," "conditioning," or "remote switching" represent unbuilt superior loops that do not "exist" within the meaning of the FTA and are not "available" within the meaning the Agreement.

After a review of the record, the MPSC found that the requested loops were available. The term "available" is not defined in the Agreement. The MPSC defined the term "available"

by stating that:

> [A] loop is unavailable, within the meaning of that term in the interconnection agreement, if it is located in an area not presently served by Ameritech Michigan, not when the area is served, but for some reason the order requires a field dispatch.

Opinion, at 15 & 25.

Ameritech argues that under § 9.4.2 of the Agreement, Ameritech is required to make available loops and ports "where such loops and ports are available." Section 1.4 of the Agreement defines a "loop" as "the entire transmission path which extends from the network interface or demarcation point at a Customer's premises to the Main Distribution Frame . . . in a Party's Wire Center which serves the customer." Additionally, under Ameritech's tariff, loops under tariff may be obtained by carriers "where facilities are available." (See BRE Response Brief, at 6).

Ameritech states that "available" means "present or ready for immediate use" under its plain and ordinary meaning. (Ameritech's Brief at 15 citing Webster's Ninth New Collegiate Dictionary (1989)). Thus, Ameritech states "a loop is available where an 'entire transmission path' from the customer to the wire center is 'present or ready for immediate use.'" Id. With this definition of "available," Ameritech argues that loops that involve a "complex dispatch," "conditioning" or "remote switching" are not available because additional engineering and construction are necessary, either to create or upgrade some portion of the path between the customer and the wire center, before the loop is ready for use. Id

BRE argues that the MPSC decision is not contrary to federal law. First, the MPSC had considerable record support for its decision. BRE's witness, Mr. Michael Starkey, testified that

the definition of "available" should be "that can be used" or "that can be got or had; handy." Second, Mr. Starkey testified that the MPSC's definition that a loop is available when facilities exist in an area is consistent with the way Ameritech built its network. Ameritech's network consist of specific boundaries that are established for each distribution area and distribution facilities are designed to "serve the ultimate service demand" within that defined area. BRE argues that "this means that 'the facilities required to serve a distribution area are usually placed at one time to avoid the high costs of adding facilities later in established areas.'" (See BRE's Response Brief at 7.) Therefore, BRE argues that facilities are available even though additional engineering and construction are necessary when an loop order requires a "complex dispatch," "conditioning," or "remote switching."

In BRE I, the Court found that the loops were available when they required a "simple dispatch" to "connect an existing facility to the customer's premises or connect a drop line to the customer's network interface device" to be ready for immediate use. Therefore, in BRE I, the Court affirmed the Commission's definition of "available" because "the Commission merely found that if Ameritech had facilities in an area . . . and it can connect this existing facility to the customer's premises or connect a drop line to the customer's network device," then those facilities are available.

In this case, the Court finds that the MPSC's decision is not contrary to federal law. First, federal law requires an incumbent local exchange carrier to provide access to unbundled loops in its "existing network." 47 U.S.C. § 251(c). The MPSC found that Ameritech had existing facilities in the areas that BRE requested access to the unbundled loops. The record before the MPSC showed that Ameritech's network consist of specific boundaries that are

established for each distribution area and those distribution facilities are designed to "serve the ultimate service demand" within that defined area. Finally, the MPSC found that "it is unreasonable for Ameritech [] to suggest that a network constructed on the basis of long run, forward looking costs would not have sufficient spare capacity to permit the provisioning of unbundled loops as normal, routine work." The Court affirms the MPSC's decision that since Ameritech has an existing network of unbundled loops that can be used for unbundled loop access, it must provide BRE with access and make the unbundled loops "available" even if additional engineering and construction are necessary.

Second, in this case, the staff of the MPSC characterized Ameritech's claims of additional engineering and construction work as "normal work" and stated that "the costs associated with such [normal] work are recovered in Ameritech Michigan's monthly recurring and nonrecurring charges for unbundled loops." Opinion at 14. Additionally, the staff stated "that most, if not all, of the charges being imposed on BRE as special construction charges are routine costs already reflected in the costs and rates approved by the Commission." Id. The MPSC adopted this view by finding "that the ALJ correctly determined that additional charges should not be assessed by Ameritech Michigan for normal or routine work required to provision loops." Opinion at 26 (emphasis added). Further, the MPSC found that "the record does not establish any unique or unusual circumstances to justify the imposition of special construction charges in this case. Id. After a review of the exhibits and the parties arguments, the Court finds that the MPSC's considered all the relevant factors and its decision does not represent a clear error of judgment. Therefore, the Court affirms the MPSC's decision under both federal law and the parties Agreement.

B. Whether the Special Construction Charges Constitute Discrimination within the Act.

The second issue is whether Ameritech discriminated against BRE when it assessed BRE with special construction charges for access to unbundled loops. Section 251(c)(2) of the FTA imposes "the duty to provide, for facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . ." 47 U.S.C. § 251(c)(2). Section 251(c)(3) of the FTA also imposes "the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . ." Id. § 251(c)(3). The FCC has interpreted these provisions to require that interconnection and unbundled network elements be "offered equally to all requesting carriers, and where applicable, they must be equal to the terms and conditions under which the incumbent LEC provisions such elements to itself." FCC's Interconnection Order, CC Docket no. 96-98, ¶ 315 (August 1996). Additionally, the FCC has stated unbundled network elements be provided under the terms and conditions "that would provide an efficient competitor with a meaningful opportunity to compete. Id. Finally, in sections 8.4 and 9.0 of the Interconnection Agreement, Ameritech agrees to provide access and service in a nondiscriminatory basis.

The MPSC found that the actions by Ameritech constituted discrimination against BRE under the requirements of FTA and the Interconnection Agreement. The MPSC found that if Ameritech does not impose special construction charges on itself, it is providing those network

elements to itself on different terms and conditions from those which it imposes on BRE. The MPSC received testimony that in three specific instances Ameritech imposed special construction charges on BRE for unbundled loops, but did not impose the same charges to itself when BRE's retail customers switched service to Ameritech. (BRE Brief at p.10 citing to TR. 293). Additionally, the MPSC found that BRE is not being given a "meaningful opportunity to effectively compete" when Ameritech imposes the special construction charges. Finally, the MPSC states that Ameritech has no authority under its special construction tariff to impose special construction charges upon its retail customers or its wholesale customers.

Ameritech argues that BRE is not a retail customer, but a carrier. Therefore, "[f]or loops that serve Ameritech's retail customers, Ameritech bears the cost of special construction. For loops that serve BRE's retail customers, BRE should bear the cost of special construction." (Ameritech's Reply Brief, at 8.) Thus, Ameritech argues that:

> When Ameritech does special construction work to establish or upgrade service for one of its retail customers, Ameritech bears the cost and investment risk in return for the prospect of receiving service revenues from the end user. When Ameritech does the same work so that BRE can establish service and receive service revenues from an end user, the principle of nondiscrimination actually demands that BRE bear the cost and risk.

(Ameritech's Brief, at 18.) BRE argues that "both retail and interconnection customers require connectivity from the customer network interface device to the main distribution frame and hence, if the facility is 'available' for one user, it must be considered available for the other" at the same rate. (BRE's Response Brief, at 18).

The Court finds that the Commission's decision is not contrary to or in contrast to section 251(c)(2) and (3) of the Act. The Court agrees with the MPSC that Ameritech did not

provide access to unbundled loops equal to the terms and conditions under which it provisioned such elements to itself. Opinion at 29. First, Ameritech's special construction tariff prohibits it from imposing special construction charges to BRE and other wholesale customers to ensure parity with all of Ameritech's customers. Second, the MPSC's decision that when Ameritech imposes special construction charges, it inhibits an "efficient competitor with a meaningful opportunity to compete" is in accord with the FTA. Therefore, the Court agrees with the MPSC's decision that Ameritech's failure to provide unbundled loops equal to the terms and conditions under which it provisions such elements to itself is discrimination pursuant to the FTA.

Additionally, after a review of the exhibits and the parties arguments, the Court finds that the MPSC's considered all the relevant factors and its decision does not represent a clear error of judgment. The record clearly supports the MPSC's finding of discrimination. Therefore, the Court affirms the MPSC's decision under both FTA and the parties Agreement.

C. Fines, Costs, and Attorney Fees

The third issue is whether the MPSC's imposition of a fine, and the award of expenses and attorney fees to BRE are contrary to federal law. The MPSC awarded costs and attorney fees pursuant to M.C.L. 484.2601 of the Michigan Telecommunication Act, which allows for making ratepayers and other persons economically whole for violations of the MTA.

The FTA does not prohibit the imposition of fines, expenses, and attorney fees. Rather, the Act states "nothing in [§ 252] shall prohibit a State commission from establishing or enforcing other requirements of State Law . . ." 47 U.S.C. § 252(e)(3). Ameritech has provided

no legal basis for finding that the MPSC's award of costs and attorney fees pursuant to M.C.L. 484.2601 of the Michigan Telecommunication Act is contrary to federal law. Nor has Ameritech shown that the MPSC failed to consider all the relevant factors or that its decision represented a clear error of judgment. Therefore, the Court affirms the MPSC imposition of fines, expenses, and attorney fees.

V. CONCLUSION

Accordingly, for the reasons stated above, IT IS ORDERED that the MPSC's February 9, 1999 Opinion and Order is AFFIRMED.

IT IS FURTHER ORDERED that Ameritech's complaint is DISMISSED with prejudice.

IT IS SO ORDERED.

Date: JAN 4 2000

LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN BELL TELEPHONE CO.,
d/b/a Ameritech Michigan, Inc.,

Plaintiff,

v.

CASE NO. 99-CV-71180-DT
JUDGE LAWRENCE P. ZATKOFF

JOHN G. STRAND and DAVID A. SVANDA,
Commissioners of the Michigan Public Service
Commission, in their official capacities, and
BRE COMMUNICATIONS, L.L.C.,

Defendants.
_____/

JUDGMENT

IT IS ORDERED and ADJUDGED that pursuant to this Court's Opinion and Order dated JAN 4 2000, this cause of action is DISMISSED with prejudice.

Dated at Detroit, Michigan, this _____ day of JAN 4 2000, 1999.

DAVID J. WEAVER
CLERK OF THE COURT

BY: _____

APPROVED:

_____
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Pursuant to Rule 77 (d), FRCivP
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